

## Office of the Secretary, Interior

## §4.233

law judge's or Indian probate judge's supervision as to the extent and manner of presentation of such evidence.

(b) The administrative law judge or Indian probate judge may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence. The weight to be attached to evidence presented in any particular form is within the discretion of the administrative law judge or Indian probate judge, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the interested parties, may be used as evidence at the hearing.

(d) The administrative law judge or Indian probate judge may in any case require evidence in addition to that offered by the interested parties.

### §4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in §4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses.

(1) These affidavits must be made before an officer authorized to administer oaths, must be attached to the will, and must be in substantially the following form and content:

State of \_\_\_\_\_

County of \_\_\_\_\_ ss.

I, \_\_\_\_\_, being first duly sworn, on oath, depose and say: That I am an \_\_\_\_\_ (enrolled or unenrolled) member of the \_\_\_\_\_ Tribe of Indians in the State of \_\_\_\_\_; that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_/20\_\_\_\_, I requested \_\_\_\_\_ to prepare a will for me; that the attached will was prepared; that I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses; that they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and

that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

Testator/Testatrix \_\_\_\_\_

We, \_\_\_\_\_ and \_\_\_\_\_, each being first duly sworn, on oath, depose and state: That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_/20\_\_\_\_, \_\_\_\_\_, a member of the \_\_\_\_\_ Tribe of Indians of the State of \_\_\_\_\_, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us, and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_/20\_\_\_\_, by \_\_\_\_\_ testator/testatrix, and by \_\_\_\_\_ and \_\_\_\_\_, attesting witnesses.

(Title) \_\_\_\_\_

(2) If uncontested, a self-proved will may be approved and distribution may be ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined.

(1) If none of the attesting witnesses resides near the place of hearing at the time appointed for proving the will, the administrative law judge or Indian probate judge may:

(i) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

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(ii) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

(2) The provisions of § 4.232 are applicable with respect to remaining issues.

#### **§ 4.234 Witnesses, interpreters, and fees.**

(a) Interested parties who desire a witness to testify or an interpreter to serve at a formal hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper.

(b) The administrative law judge or Indian probate judge may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts.

(c) In hardship situations, the administrative law judge or Indian probate judge may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment, the administrative law judge or Indian probate judge must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally.

(d) Costs of administration allowed against the estate under paragraphs (b) or (c) of this section will have a priority for payment greater than that for any creditor claims allowed. Upon receiving an order, the Superintendent must immediately initiate payment of these sums from the estate account, or if funds are insufficient, then out of funds as they are received in the estate account before closure of the estate, with the proviso that these costs must be paid in full with a later allocation against the interest of a party, if the administrative law judge or Indian probate judge has so ordered.

#### **§ 4.235 Supplemental hearings.**

After the matter has been submitted but before the time the deciding official has rendered his or her decision, the deciding official may upon his or her own motion or upon motion of any interested party schedule a supplemental hearing if he or she deems it

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necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all interested parties in the manner provided in § 4.216. Where the need for such supplemental hearing becomes apparent during any hearing, the deciding official may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event, the records must clearly show who was present at the time of the announcement.

#### **§ 4.236 Record.**

(a) After the completion of the formal hearing, the administrative law judge or Indian probate judge will make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including any transcript made of the testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and valuations of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship findings and family history;

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the administrative law judge or Indian probate judge.

(b) The administrative law judge or Indian probate judge must lodge the original record with the designated LTRO in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record must also be furnished to the Superintendents of other affected agencies. When a hearing transcript has not been prepared:

(1) The verbatim recording of the hearing must be retained in the office of the administrative law judge or Indian probate judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(2) The original record returned to the LTRO must contain a statement